No. 23-35518

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PLANNED PARENTHOOD GREAT NORTHWEST, HAWAII, ALASKA, ET AL.,
Plaintiffs-Appellees,

v.

RAÚL LABRADOR, ET AL.,
Defendant-Appellant,

On Appeal from the United States District Court
for the District of Idaho

No. 1:23-cv-00142-BLW
The Honorable B. Lynn Winmill

EXCERPTS OF RECORD
Volume 2 of 4

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UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO

PLANNED PARENTHOOD GREAT NORTHWEST, HAWAII, ALASKA, INDIANA, KENTUCKY, on behalf of itself, its staff, physicians and patients, CAITLIN GUSTAFSON, M.D., on behalf of herself and her patients, and DARIN L. WEYHRICH, M.D., on behalf of himself and his patients, Plaintiffs, vs. RAÚL LABRADOR, in his official capacity as Attorney General of the State of Idaho; MEMBERS OF THE IDAHO STATE BOARD OF MEDICINE and IDAHO STATE BOARD OF NURSING, in their official capacities, COUNTY PROSECUTING ATTORNEYS, in their official capacities, Defendants.	CASE NO. 1:23-cv-00142-BLW **MOTION HEARING**

TRANSCRIPT OF VIDEOCONFERENCE PROCEEDINGS
BEFORE THE HONORABLE B. LYNN WINMILL
MONDAY, APRIL 24, 2023; 2:05 P.M.
BOISE, IDAHO

Proceedings recorded by mechanical stenography, transcript produced by computer.

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I N D E X

APRIL 24, 2023

P R O C E E D I N G S

April 24, 2023

THE CLERK: United States District Court for the District of Idaho is now in session, the Honorable B. Lynn Winmill presiding.

The Court will now hear oral argument on the motion for preliminary injunction in Case 1:23-cv-142, Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky, versus Raul Labrador.

THE COURT: Good afternoon, Counsel. I want to first thank counsel for accommodating the hearing today. We had discussed the need for an expedited process. I know the defense objected, but I appreciate counsel being willing to work with us on this schedule.

I do need to warn you. I have been back in the country for all of 36 hours, so I'm seriously jet-lagged. I'll try not to let that reflect my questions. I did read all of the briefing in some detail over the last few days on the way back. So I think I'm pretty much up to speed on what the issue is, and I'm going to offer some preliminary comments here in a moment.

With regard to the -- there were a couple of procedural or housekeeping matters that need to be addressed. One has to do with objections to amicus briefs. I've generally found amicus briefs to be helpful, sometimes not, but usually helpful. I'm going to overrule the objection to the amicus

briefs but allow the defendants to file a response to that amicus brief by Thursday at noon. I'll give you until Thursday at noon, which will then allow the matter to be fully at issue and ready for a decision.

I know that's also somewhat expedited, but we need to move quickly given the nature of the proceedings as a request for preliminary injunction.

I'm also going to, I guess, sustain the objection to Mr. Gonick's motion for *pro hac vice* status without a sponsoring attorney. I apparently have relaxed that requirement in a couple hearings in the last little while, but I'm not sure why I did that. I think maybe I was just tired and wasn't aware of, frankly, what was going on. And I have been pretty insistent that we have local counsel even for amicus.

It should be a pretty simple matter, and I would require that the attorney generals who have filed an amicus brief, that they obtain local counsel also by Thursday at noon -- Thursday, April 27th, at noon, for the Court to consider their briefs. I've read it, so I'm well informed.

But I do think, just as a matter of procedure, that if you're going to enter an appearance, you will need to have an attorney admitted in the state of Idaho. It shouldn't be a real difficult thing to accomplish since I'm sure there is any number of attorneys who would be willing to participate in this proceeding.

I would indicate there is a couple of issues -- there is at least one issue I really don't want to spend a lot of time on. There was an argument that we don't have all the defendants served and represented here.

I understand the argument and concern, but if the plaintiffs are entitled to injunctive relief as to the served and represented defendants, it seems to me that we can and must proceed as to them. As additional defendants are added and represented -- and perhaps they have already been added and are represented in some fashion. But if that is not true and they are added and represented in the future, the plaintiffs can seek to extend any injunction to those defendants, and those defendants can oppose it and make additional arguments as to why any injunction should not apply to them. And likewise, if I deny the request for injunction, then obviously it would be moot, and they wouldn't need to take any action at all.

Finally, St. Luke's asked for oral argument time. I indicated I would grant that as long as the plaintiffs would be willing to share that time. I think that's only fair to the defendants. So I understand they're going to cede five minutes of their time to St. Luke's.

I think Ms. Pugh indicated that we would try to limit this to about 20 minutes per side. I can be a little more flexible than that. I might add on five minutes depending on how oral argument is proceeding, but I want to see how that

plays out.

Nevertheless, because I've read the briefing and I'm going to offer some comments as to my preliminary thoughts, for that reason, I think you can get right at the issues, and we won't have to spend a lot of time arguing matters that, frankly, do not interest me at this point.

So here, let me turn then to the merits, the substance of the matter, and I'll lay out my thinking so you can play off from that.

Now, let me indicate that it's very difficult to lay out my thinking without showing, frankly, where I'm leaning, but it is at most a leaning; it is not a firm decision at all. It's really just a way to signal to you what the issues are in my mind, how I typically would look at those issues, and provide you with an opportunity either to reassure me that I'm right in that analysis or indicate why I'm wrong.

So let me go ahead and start off with that.

I think clearly the biggest issue in this case is that of standing and whether there is injury in fact. Just to be clear, I think the standard is in the *Susan B. Anthony List* case, where the injury-in-fact requirement requires three showings: one, that the plaintiff shows that they intend to engage in conduct arguably affected with the constitutional interest; second, that they intend conduct which arguably would be prescribed by the challenged statute; and, third, that the

plaintiff faces a substantial threat of future enforcement under the statute.

It seems to me that the plaintiffs have clearly and unequivocally stated their past practice and future intention of referring patients to out-of-state clinics for medically necessary abortions. So I think the first requirement is clearly met.

The second two requirements, in different ways, hinge really upon the attorney general's letter of March 27th, I believe, offering his opinion that such conduct would violate Idaho's abortion statute.

Now, the attorney general argues that his withdrawal of the letter puts plaintiffs in the same position they were in if it had not been written. I may have added to that by a comment during our status conference earlier that it is -- you know, the withdrawal of the letter means it no longer has any legal effect. I think that's probably accurate. Nevertheless, the question is whether that conduct can, I guess, successfully unring the bell.

It does seem significant to me that General Labrador indicated in his withdrawal letter that the original letter should not have been issued because it was procedurally improper.

However, even so, it strikes me that it does not change the fact that it was a public statement made by Idaho's

chief legal officer that a physician's referral of patients to an out-of-state clinic for an abortion would constitute a violation of the statute and subject the referring doctor to both criminal prosecution and loss of their licensure.

This coupled with his decision not to disavow the legal analysis -- and I think they have cited public statements in which General Labrador has indicated his intent to vigorously enforce Idaho's abortion statute -- it would seem at first blush to create a genuine fear among physicians that their past and intended future conduct of referring patients to out-of-state clinics for an abortion would create a well-founded fear that they may lose their licensure and face criminal prosecution. At first blush, that would seem sufficient to establish standing.

Now, you know, again, I understand and I know that with the errata that was filed by the plaintiffs, that it's now clear that the attorney general is not the primary or does not have the authority to be the primary enforcement agency for the general abortion statute. But nevertheless, given the fact -- as chief legal officer, their opinion carries weight.

And I think for that reason, that, in and of itself, would suggest that the second and third requirements under the *Susan B. Anthony List* case are satisfied, that is, that the plaintiff's intended conduct is arguably proscribed by the challenged statute -- that is because the state's chief legal officer has said so -- and second, that they face a substantial

threat of future enforcement under the statute because it is, again, the opinion of the chief lawyer for the State of Idaho.

So that's my initial thinking on that issue. I think the argument about ripeness -- it does seem to me that, particularly in the area of the First Amendment concern, that the issue of a pre-enforcement challenge really is looked upon favorably because of the chilling effect that enforcement measures would take against a doctor or any plaintiff who is trying to exercise their First Amendment rights.

I'm also concerned with the defense argument that the Eleventh Amendment bars this suit. Clearly, there is the exception that injunctive relief against a state officer who has a significant tie or connection to the enforcement, as expressed by the Ninth Circuit in *Wasden*, would seem to still apply.

And I need to hear from the defense as to why that is no longer good law. I know you have argued that somehow the passage of this new statute -- I think it's termed the Abortion Trafficking Statute -- and the provision of specific enforcement authority to the attorney general somehow bears some relevance as to why the *Wasden* decision is or is not still binding.

And I'm also struggling a little bit with the argument that the *Dobbs* decision itself has changed the lay of the land so that the *Wasden* decision simply no longer applies. I need some real clarity on that because I'm not sure I understand that.

So, with that, let me hear the arguments of counsel, starting with the plaintiff.

Is it Mr. Neiman?

MR. NEIMAN: It is, Your Honor. Thank you for asking.

THE COURT: All right.

MR. NEIMAN: And welcome back.

THE COURT: Thank you.

MR. NEIMAN: And thank you for accommodating our desire to be heard on your first day back in court. We very much appreciate that.

And also thank you for sharing your initial views. Obviously, we are not going to try to talk you out of any of those, but let me see if I can reinforce them a little bit.

So this is, as you say, a pre-enforcement challenge. And I think it's, you know, pretty clear that a prosecutor can't defeat a pre-enforcement challenge by saying you don't have a credible fear of enforcement, while at the same time straining at every turn to preserve his freedom to bring the very enforcement action he claims you have no reason to fear; right? And that's exactly what the attorney general has tried to do here.

If he really wanted to try to address the fear of enforcement that led our clients to file this lawsuit, as documented in their affidavits, it would have been easy for him to say that his March 27th letter was wrong substantively.

THE COURT: Mr. Neiman, do you agree that if Attorney General Wasden had, in fact, said that -- that, "Never mind. You know, it was written by a first-year attorney in our office. He has now been fired. He was wrong, and we are rejecting that analysis," we wouldn't be here? Do you agree with that?

MR. NEIMAN: It would certainly be a much tougher case for us to pursue, Your Honor.

THE COURT: Okay.

MR. NEIMAN: We obviously still have concerns about the actions of other people who have -- within the state of Idaho who have the ability to enforce this law, but it would certainly go -- it would be a much tougher case for us on standing than it is right now.

THE COURT: Okay. Go ahead.

MR. NEIMAN: So -- but he hasn't done that; right? And he has had a lot of opportunities to do that; and instead, he has done the opposite. He's just been very careful in everything that he's said, from his April 7th letter, to the meeting we had with Mr. Wilson on April 10th, to the briefs that he has filed in this case, to preserve for himself the ability to, tomorrow, if this case were dismissed, to go out and continue to seek enforcement on the theory that he laid out in his March 27th letter.

And, really, Your Honor, it shouldn't be a heavy lift for the Attorney General's Office to do just what you said. I

mean, the proposition that underlies the March 27th letter that -- which must be that Idaho outlaws at least some abortions that are performed outside the state, is just plainly contrary to the allocation of authority between the states that's the bedrock of our federal system.

It should have been easy for the attorney general to renounce that premise, but he hasn't. He has chosen over and over again not to do that, and I think it's reasonable to ask why he hasn't done that.

And I think the only reasonable inference here is that he is hoping to kind of his cake and eat it too to get the benefit of the intimidation that the March 27th letter caused for our clients while insulating himself from judicial review of that letter. And that's fundamentally wrong and shouldn't be permitted.

You know, our clients -- Dr. Gustafson, Dr. Wehyrich, Planned Parenthood -- they are healthcare providers. They have patients, some of whom have pressing medical or personal need to terminate their pregnancies. And before March 27th, my clients knew exactly what they should do.

They could advise patients that abortions were lawfully available outside of the state. They could give them information about appropriate out-of-state providers. They could help schedule proceedings out of state, connect their patients with travel assistance, and they could talk to

providers outside the state to ensure continuity of care. And they also could themselves provide abortions out of state, as Planned Parenthood does in Washington and as Dr. Gustafson anticipated doing. Although she is a licensed Idaho provider, she is also licensed in Oregon, and she anticipated providing abortions there as well.

And my clients radically changed their behavior after the March 27th letter. And the attorney general has kind of tried to minimize that letter. But as Your Honor pointed out, it's a letter from the top law enforcement officer in Idaho. It's on his letterhead. It's under his signature, his personal signature.

And, you know, it's interesting, Mr. Wilson included in their reply brief -- I shouldn't say Mr. Wilson -- the Attorney General's Office included in their reply brief, you know, their internal procedural guidance about opinion letters.

And if you look at that, Your Honor -- I would encourage you to, if you haven't had a chance to look at it yet -- it lays out kind of three tiers of opinion letter that the attorney general could issue. There's kind of the informal conversation. There is the letter that's sort of a nonbinding letter that comes from an assistant in the office and has a little proviso at the end that says this is a preliminary view. And then there is the highest level, the formal opinion letter, which is characterized by coming out under the signature of the

attorney general.

That's what this is. This is not a small thing when an attorney general issues a letter like this.

And that kind of formal statement quite naturally chilled my clients, and it's very understandable that they remain chilled when the attorney general isn't willing to say that the analysis is wrong.

So, look, he puts in this April 7th letter -- and I think maybe a sensible way to analyze that letter is under the whole body of case law that addresses sort of voluntary cessation; right? There is a whole body of case law out there. Your Honor actually had a case involving that in the abortion context a few years ago in the *McCormack* case.

And as Your Honor found in *McCormack* and confirmed by the Ninth Circuit, what's required for a voluntary cessation to kind of make a case go away is it has to be absolutely clear -- that's the words, the legal standard, "absolutely clear" -- that the party is not simply going to go back to the prior position as soon as the litigation ends.

There is nothing in the April 7th letter that would make that absolutely clear. And indeed, the attorney general has, you know, quite carefully tried to preserve to himself, in everything he said in this case, the ability to do just that, to go right back to the position that he had once this lawsuit was over.

And that's why, as our supplemental affidavits laid out, our clients can't go back to business as usual as it was before March 27th. They are still right where they were when that letter came out, because the state's highest law enforcement officer has said this is what the law means, and has taken it back on procedural grounds but hasn't been willing to say that it was wrong substantively.

So they have every reason to continue to reasonably fear, which is all that's required here, that if they resume making referrals or whatever it is that the attorney general calls a referral or if they otherwise assist in or perform a lawful abortion outside of Idaho, they could face license revocation and perhaps criminal prosecution.

I think what the attorney general is saying to you is: That's fine. It's fine if my clients continue to labor under that fear, that reasonable fear, that the Court shouldn't do anything, and that our clients -- you know, I don't think he uses these exact words, but sort of the suggestion that, you know, our clients are somehow just looking for a lawsuit and being unreasonable in what they said in their supplemental affidavits, that they haven't gone back to business as usual.

But that's wrong. I mean, my clients, Dr. Gustafson, Dr. Weyhrich, the dedicated people at Planned Parenthood, they take their work and their obligations to their patients extremely seriously. They don't want to be in a lawsuit with

the attorney general. They want to be able to go back and tell their patients the truth about the availability of the care their patients need out of state. They want to go back to being able to help their patients access that care without fear of losing their professional licenses or going to jail.

And that's a perfectly appropriate exercise of this Court's authority, to step in, to protect my clients, who are self-censoring in the face of the Attorney General's letter.

THE COURT: Mr. Neiman, could you just address one concern.

MR. NEIMAN: Sure.

THE COURT: And this goes back to the errata that you filed.

MR. NEIMAN: Yep.

THE COURT: I understand what happened. You took an earlier draft, or someone in your office took an earlier draft of the bill which included kind of an expansive -- or an expansion of the attorney general's authority to initiate prosecutions under Idaho's general abortion statute if a local prosecuting attorney fails or is unwilling to do so. That was changed, and it only applies now to that abortion trafficking, the new bill that takes effect July 1.

So what that means, then, is we are left in the same posture as we were, I think -- and maybe, again, Mr. Wilson will want to address this -- that we were in terms of the *Wasden*

case, where what we have is the attorney general having the ability to come in when invited to do so and participate in prosecution, presumably make referrals to a county prosecutor for possible prosecution. And I don't recall -- I didn't get a chance to go back and reread *Wasden*, although I've read it in the past -- whether or not there was any specific reference to just the persuasive effect of the chief legal officer for the state offering an opinion and how that may impact local prosecutors' decision to seek enforcement.

But, given that, doesn't that limit -- you know, with no prosecutor having made any similar statement, no prosecutor having indicated we are going to interpret the statute the same way the attorney general does, how does that affect your argument with regard to standing and the idea of threatened injury?

MR. NEIMAN: Sure, Your Honor. First, just a couple of quick points on that. I mean, I think *Wasden* is still controlling authority on the Eleventh Amendment issue here. There is nothing in *Dobbs* that undermines *Wasden*.

And I think that I'd also point you to the *Culinary Workers Union* case that I think is cited in our briefs that does talk about the kind of persuasive force of a recommendation from the attorney general being important.

And us thinking about this in sort of two pieces. One: Is the attorney general an appropriate defendant in this

case? And *Wasden* answers that question.

And then the question is: Does the attorney general have to be able to carry out the threatened prosecution all by himself in order for our clients to be afraid? And the answer to that as a practical matter is no; right? I mean, the chief law enforcement officer has said: This is what the statute means, and I'm not taking it back except on procedural grounds. That gives us ample reason to be afraid that his mantle will be picked up by others.

By the way, Your Honor, just, you know, in terms of what the Idaho law is on this point, right, I think it's the *Summer* case that's cited in our briefs and also I think in the attorney general's briefs -- is a case in which the attorney general -- prior attorney general just went into a local grand jury, obtained an indictment, prosecuted the case. The defendant objected and said, like, that's not -- the attorney general doesn't have primary authority.

And what the state Supreme Court said in that case was: Well, okay, but ultimately the local DA was fine with this -- or local prosecuting authority, I should say -- was fine with this. So no harm, no foul; the prosecution is sustained.

So what that means, Your Honor, is that even if he couldn't get a DA to bring case in the first instance, he could bring the case himself, and then there would just be this question about whether the local prosecuting authority would go

to the perhaps politically perilous route of objecting to him having done so.

So this is not a case where he's at all -- I don't think we have to show that he could bring a case himself in order to have standing here. The question is whether we have fear of enforcement, and we do based on what he said and his influence. But I think it's important to recognize that he can do more than just be influential.

THE COURT: Let me ask a related question very quickly. And I'm sure I'm taking up all your time. But you cited in your -- I think it was in your reply brief the idea that the failure to disavow the intent to prosecute can be relevant in terms of determining whether or not there is a real threat of injury.

I didn't get a chance to go back and read those cases that you cited. Were those cases -- and maybe you don't recall either, but do you know whether those cases involve simply a bringing of an action offering some reason for the plaintiff to think that a prosecutor might, in fact, seek to enforce a law in a particular way and where the prosecuting attorney or district attorney failed to disavow his intent to do so -- his or her intent to do so, and that that in some way then becomes relevant in terms of the threat of prosecution? Can you fill me on that? Because that would seem to be quite relevant to this issue.

You know, we've got a number of prosecuting attorneys

who have now been joined and are represented here, not all of them presumably. And would their failure to disavow an intent to prosecute, would that be relevant here or not?

MR. NEIMAN: I think it is -- I think -- I think that's the Ninth Circuit law, Your Honor, is that, you know, a failure to disavow can sustain the credible threat standard. And I think the *Tingley* case says that that we cited in our briefs. You know, it's sensible; right?

It just makes me think back, Your Honor. I had a case earlier in my career where we were working with some British lawyers because our client was British and being prosecuted in the United States. And the British lawyers were saying to us: Well, shouldn't our first argument be the government didn't warn us that they would -- they might charge our client under this law? It was like a novel interpretation of the law.

And I said to them: No, that's actually not a defense in the United States. The government doesn't have to tell you that they're reading a law in a particular way before they prosecute you. Right? The threat of prosecution is created by the law itself and by the attorney general's interpretation of the law. We don't need to have, on top of that, a prosecutor saying, "By the way, I also think I'm going to follow that interpretation," in order to have a threat.

THE COURT: Okay. Go ahead.

MR. NEIMAN: So, Your Honor, I did want to just make a

quick note on potential ripeness, which you addressed briefly in your remarks, just because we didn't have a chance to address that in our briefing because it was raised for the first time in the reply of the defendants.

I would just say, first of all, that's a waiver, right, failure to raise that argument. Potential ripeness is waivable when it wasn't raised until reply, and that's a waiver.

The document is on thin ice right now given the *Susan B. Anthony List* decision of the Supreme Court raises doubts about whether potential ripeness is even a valid doctrine anymore given the obligations of the federal court to hear a case when its jurisdiction has been properly invoked.

And potential ripeness isn't appropriate here substantively because this is a legal dispute about whether Idaho can sort of apply its law to out-of-state conduct and can restrict First Amendment protected speech in Idaho about conduct lawful outside of Idaho, not a factual dispute where further development is required.

So, for multiple reasons, we don't think that that's well taken, but I did want to just address it briefly --

THE COURT: Okay.

MR. NEIMAN: -- because it was not addressed in our brief.

Finally, Your Honor, unless you have other questions --

THE COURT: Well, you have used your 15 minutes. I'm going to add five more minutes for rebuttal and give the defense 25 minutes so as to keep a level playing field here.

MR. NEIMAN: Thank you, Your Honor.

THE COURT: Thank you.

Ms. Olson.

MS. OLSON: Thank you, Your Honor.

St. Luke’s Health System, on behalf of its providers and the mission to serve its community, asks this Court to consider five points as it decides the legal issue before it.

First, Your Honor, Idaho healthcare providers need some certainty on whether they can continue to provide out-of-state referrals so their patients can obtain the appropriate standard of care on essential reproductive health matters.

THE COURT: Ms. Olson, does St. Luke's operate anything outside the state of the Idaho? In Oregon?

MS. OLSON: Your Honor, it has a facility in Ontario, Oregon.

THE COURT: I thought it did, and I wondered how that plays into this, if at all.

MS. OLSON: Well, Your Honor, I would say that the way it works for St. Luke's within Idaho, I mean, that is where the concern is with the application of this particular statute. And so the facility in Ontario serves people who live in Ontario and

Eastern Oregon. And sometimes when Idahoans end up over there, they may -- they may end up going there.

But the focus here is on the impact it has within Idaho. Because, as I'm sure the Court knows, you know, the -- St. Luke's is the only health system that is, you know, fully based within Idaho and operates essentially throughout Idaho. And the numbers of patients it serves in terms of actual visits exceeds a million.

So the focus for St. Luke's is --

THE COURT: The reason I asked the question is: If General Labrador's interpretation is correct, then a doctor in Boise faced with a patient for whom an abortion is medically necessary because of preeclampsia or for whatever other reason and which it is uncertain -- now, of course, the law has changed in terms of, you know, protecting the woman's life, but it would -- the General's interpretation of the statute would clearly be relevant to whether they could refer them to a doctor in the same clinic or the same system in Ontario.

And that's part of the concern I guess your client would have, is that we couldn't make referrals even within our own system; is that correct?

MS. OLSON: I think that's -- I mean, that would absolutely be correct, Your Honor.

And I think most significantly, the attorney general's letter, even withdrawn, would have an impact on making such a

referral anywhere out of state, whether it was to St. -- if you're in Northern -- if you're in, I guess, South Central Idaho and Oregon might not be the closest place, you also couldn't refer to another out-of-state location.

THE COURT: To Nevada, for example.

MS. OLSON: Yeah, to Nevada, to Washington. As the Court knows, as a long-term Idahoan, I should have better geography than that. But I think that's -- that's absolutely -- that's absolutely correct.

And I think the Court, in its initial comments when it referred to the -- you know, the proverbial bell that can't be unrung, that is part of St. Luke's real concern here, is that the fact that the letter is out there and asserted that a healthcare provider who made such a referral may have her license suspended or -- and the statute provides on a second offense, not for a short period of time, but revoked altogether -- that the chilling effect that that has on St. Luke's providers and on their patients in what could be the most critical moments for obtaining healthcare, you know, for wanted pregnancies, for women who have other children, for the simple everyday conversations that the St. Luke's providers are used to having with their patients, there is a significant impact there.

And I think, Your Honor, among the other things that St. Luke's wants the Court to really consider and think about as

it decides the legal issue before it is that the chilling effect and the impact this will have on the Idaho OBGYN and other reproductive healthcare providers who already are leaving the state because of the challenges of practicing reproductive health medicine here.

And although in opposing St. Luke's motion to file the brief, Your Honor, the State says: Well, most of the things you cite occurred prior to March 27 and the date when Attorney General Labrador issued the letter -- that may be true, Your Honor, but I think it stands to reason that this interpretation by the chief law enforcement officer in the state, even if withdrawn, will serve as a further impetus for people to leave the state. And significantly, it will detour -- deter other healthcare providers from coming in.

As St. Luke's sets out in its brief, one of the doctors from Northern Idaho with the medical center that's leaving in Bonner County, you know, people who go into the field of medicine, and particularly young, bright residents, have many, many choices of where to go. Even if they are from Idaho, they have opportunities outside. And doctors don't like so much having interaction with the legal profession, and there is simply -- there's no reason for them to come here if they are worried that actually practicing medicine to their standard of care means that they might have increased contact with the -- with the legal profession, Your Honor.

THE COURT: Okay. I think your time is essentially up. But go ahead, and you can wrap up here.

MS. OLSON: Yes, Your Honor.

I just wanted to emphasize, kindly, Your Honor, it is important here for Idaho providers and their patients to have some legal certainties, and that's why we think it's important for the Court to address the issue that plaintiffs have brought before it.

And I thank the Court and also plaintiffs for providing this time to St. Luke's.

THE COURT: All right. Thank you.

Mr. Wilson. Mr. Wilson, just before you start your time, I will at some point want you to answer a question I'm going to give you -- you can kind of mull it over as I'm asking it and then think about it as you're arguing. I'm sure you're capable of doing two things at once there.

But imagine yourself as a doctor -- or excuse me -- as a lawyer, perhaps in Ms. Olson's shoes, and you have an OBGYN doctor who comes to you, and she indicates that she feels the need to refer a patient to a place where they can obtain an abortion for medical reasons; it's a wanted pregnancy but one in which it is not clear to the doctor that the referral would comply -- or that the abortion could be performed in Idaho and, therefore, the referral is being made out of state.

Can you advise that doctor, in the face of General

Labrador's letter, even with the withdrawal of that, that they will not face prosecution or loss of licensure if they proceed to make that referral?

So that's the question I want you to answer. You can work that into your -- I often ask counsel on one side to imagine what their role would be as a counselor if on the other side, as a way of kind of testing the arguments that you're making.

So go ahead with your argument.

MR. WILSON: Thank you, Your Honor. I appreciate it, and I'll definitely make sure to touch upon that.

First of all, we really appreciate the Court making time for us despite the jet lag. We would be happy to have the hearing at 2:00 in the morning. If that's when your good hours are right now --

THE COURT: Great idea.

MR. WILSON: -- we could reschedule for that time.

But aside from that, I would like to just set the table for what we think this dispute is really about and kind of some of the things that I think have been a bit misleading about the way the issues have been presented.

You know, when you look at a typical pre-enforcement challenge in this context, you have someone who -- you have a law that criminalizes the plaintiff's conduct, and the plaintiff brings a lawsuit about it, saying: Well, this law, on its face,

criminalizes my conduct -- and particularly if it's expressive conduct -- and they say that I'm -- there is a threat of enforcement just because this law is on the books, and I'm concerned about it, and so I'm bringing a lawsuit on it.

That's what you have, for example, in the *Tingley* case. And the Ninth Circuit says: Well, the law is on the books. Presumably it will be enforced unless there has been some disavowal that it will be enforced, and so the plaintiff has standing to challenge the law.

And usually in that case, you also have the government responding, and the government's point one of their brief is: The plaintiff doesn't have any standing whatsoever to bring the challenge that they are bringing. And point two is: If the Court finds that the plaintiff has challenging *[sic]*, we're totally right anyway, and everything we did is perfect and constitutional in every way.

Well, let's -- let's take that typical context, pre-enforcement standing, contrast it with this case. This case is not about a challenge to the law itself. The plaintiffs don't allege that 622 prohibits their conduct. In fact, they allege the opposite. They say that even when 622 is in effect, this is what they were already doing, and they believe that their conduct complies with the law.

They say the problem is not the law itself. The problem is the Crane letter that the attorney general sent. And

the Crane letter -- it's important to clarify here. The attorney general has withdrawn that letter, and it's important to understand why.

Because if -- you know, I think the Court knows General Labrador well enough to know that if General Labrador believed in this policy and if this was an official policy, you would see that point two in our brief. You would see: The plaintiffs don't have standing; but if the Court finds they have standing, everything was right about this.

But the fact is we don't have a policy. The attorney general doesn't have a policy. And the Crane letter was not a policy about this. And so there is nothing to defend. It's been withdrawn.

And getting into the details of why it was withdrawn matters. This is a situation where the attorney general -- he gets requests from legislators all the time for advice, and it's his duty under Idaho law to provide that advice. Sometimes it's a phone call. Sometimes it's a letter or an email. And sometimes it's a formal attorney general opinion. And our attorney general opinion policy outlines those three different types of opinions.

Mr. Neiman says that, oh, this is a type 3 opinion because the Attorney General signed it. I think, respectfully, if Mr. Neiman had seen more actual attorney general opinions, he would know that this was not a type 3 opinion. This was a

letter or an email response.

An official attorney general opinion has a different formatting. It's got issues presented section; it's got an analysis section; it's got the discussion and the list of authorities considered at the end.

That's not what has been provided here because this is not an official attorney general opinion. This was a private request by a legislator, and an attorney general provided a private response. The Crane letter, on its face, has Representative Crane's address only in the block that it was sent to.

But what we learned and didn't know at the time that General Labrador signed this opinion was that Representative Crane had requested this on behalf of a third party. And so as soon as he received the letter from General Labrador, he immediately forwarded it to his constituent, who really wanted to know. And the constituent published it on the Internet.

This opinion never would have been published but for that. It would have been private advice provided by the attorney general to Representative Crane. Only the constituent published it.

And we learned about it because the plaintiffs here, they saw it published on the website. They sued about it. And we heard about it when the lawsuit was filed. And when we realized what had happened here, that Representative Crane had

just served as a pass-through for a request by a constituent, we said: That's not the proper use of the Attorney General's opinion -- opinion authority, and this is not something that is the proper use of it.

And so General Labrador has been clear and unequivocal that the opinion is withdrawn, void, and does not state the attorney general's opinion on any question of Idaho law.

And that's why you don't see that point two in our brief, where we say: And in any event, General Labrador is 100 percent right. Because he doesn't have an opinion on this issue. All he did was answer a private request for a legislator that turned out to be an improper --

THE COURT: But, Mr. Wilson, how can you -- well, how can you say that he doesn't have an opinion when he has written a letter, even if it was mistakenly written, was withdrawn -- he has written a letter which has now entered the public forum expressing an opinion as to how the statute should be formulated?

Now, whether it's his personal opinion, it's on his letterhead. It's not signed, you know, "Raul" with no reference to his status as the Attorney General. How does that not trigger the concerns under the *Susan B. Anthony List* case about their conduct is at least arguably a violation of the statute? Because it's arguably a violation of the statute because Attorney General Labrador has said so in a letter which has now

become public, and there are credible threats of prosecution because, obviously, that information is now in the public domain, and all 44 prosecuting attorneys in the state of Idaho know of that opinion.

So how can we just ignore the letter?

I understand that it was, I guess, a mistake. It was not intended to be some kind of binding guidance or any binding statement of the attorney general, but it does reflect an opinion of the Attorney General's Office that was publicly disseminated. And I don't know how you put that genie back in the bottle, even if it has -- it should not have been and even if it was withdrawn.

So that's my concern, which really ties me back into the question I asked at the beginning: How do you advise a doctor if they come to you and say, "I need to refer this patient to Ontario, Oregon, to our office there to perform this surgery which we don't think would be lawful under Idaho law but is lawful under Oregon law and is medically necessary"?

MR. WILSON: Well, Your Honor, I think that's a great question. And the first thing I would say is that we wouldn't characterize issuing this opinion as a mistake. We would characterize the request for this opinion as having been an abuse of the opinion process.

And, you know, while the federal courts lack authority to issue advisory opinions, General Labrador does have the

authority and the duty to issue advisory opinions but only in specific circumstances. And so if those circumstances are not present, that's why he's withdrawn the opinion, because it became clear that this was not a proper request.

But to get to the heart of the Court's concerns that I think really answers the issue here, I'm going to tell you how I would answer that physician if that physician came to me and I was the counsel for the physician. I would say: There's three reasons that you don't have to be concerned here, and these are the three reasons that tie into the things that plaintiffs have to show to show that they have standing here.

And I'd say: First, you don't have to be concerned because the attorney general lacks general prosecutorial jurisdiction in Idaho and any specific jurisdiction over this statute. And I'd say: Second, the Crane letter didn't threaten anybody, much less you, with any prosecution. And I'd say: Third, there is no ongoing conduct of any kind into the future by the attorney general or any of the other defendants in this action that would give rise to a claim.

So taking each of those in turn, and whether you look at this through standing, whether you look at it through ripeness, mootness, irreparable harm, all three things required in the same situation -- sorry -- under every doctrine. You've got to be able to show that you can threaten; you've got to show that you did threaten prosecution; and you've got to show that

it's continuing. None of them are present here.

So on the question of whether the attorney general can threaten, the Court's characterized him as the chief law enforcement officer of the state. I believe a better characterization would be chief legal officer. Because in law enforcement, the attorney general's jurisdiction is limited to assisting local process, the prosecutors.

And so you would have to have an initial action by the prosecutor under this theory -- of which there has been none here and none alleged -- and then the attorney general assisting it in some way. You don't have that.

And the passage of the new law giving the attorney general limited jurisdiction over Section 623 only, that just reinforces the point. There was a specific proposal to give the attorney general prosecutorial jurisdiction over this statute. The legislature removed that, and the version that the governor signed doesn't give him that authority.

So he is not the chief law enforcement officer with respect to the criminal law in this state. He has the ability to assist those local prosecutors if they've asked.

He did not communicate this letter to anyone other than to Representative Crane. It only got into the hands of local prosecutors likely when they were served with a lawsuit about it.

And for these reasons, we don't think the *Wasden*

decision applies. *Wasden* applied a version of the attorney general's statute that's a past iteration. And at the time, it characterized in a footnote -- it said that recent changes that -- had further cabined the attorney general's authority. He said: Oh, those are just dicta, and so they don't matter in this case.

Well, we think that what the Ninth Circuit called dicta back then has become very clear with what the legislature has just done in giving us authority over 623 but not over 622. The attorney general lacks prosecutorial authority in this case.

And I also suspect, Your Honor, that it's not very often that you have a government official coming here to not defend the thing that he wrote on the merits and also say that he doesn't have power over the issue. It's just simply the case under Idaho law.

You know, Mr. Neiman has said that, you know, well, the attorney general hasn't come around and agreed with us on the issue, but we are not required to agree with the plaintiffs to show that there is no controversy here, there is no justiciable dispute. There can be no justiciable dispute simply because we haven't weighed in, and we don't have the authority to.

So if you look at the second prong here of whether there actually was a threat, a credible threat of enforcement, I mean -- and actually, I need to say one more thing before I miss

it.

In terms of our ability to threaten, we think Idaho law is very clear and that *Wasden* has been superseded by the subsequent changes in Idaho statutory law. But if the Court has any doubt on this question --

THE COURT: How is that -- I'm not sure I understand the -- I don't have the section number with me. My understanding was that the *Wasden* decision was based upon the general attorney general authority and was not tied to any specific prosecutorial authority under any abortion statute. And my understanding is that that statute with regard to the attorney general's general authority -- I think it's Title 67, I think -- has not changed since *Wasden*.

So what statutory change has led to a change in law so substantial that we should ignore *Wasden*?

MR. WILSON: What I'd say that -- the two things are -- is that in *Wasden*, you had the version of the statute that was in effect. Frankly, the attorney general argued, similar to what we're arguing here, that his ability was limited to assisting local prosecutors. And the Ninth Circuit construed that in a broad way under the context of a facial challenge to an abortion statute. They construed that in a broad way and said: You do have enforcement authority here.

And it dismissed comments of the Idaho Supreme Court in the *Summer* decision which noted how this statute had cabined

the authority of the Attorney General. It dismissed those as dicta and said, you know, those don't really control because they're dicta here.

Well, if it was dicta then, the legislature has made it more clear precisely by statutes like the one the legislature just passed, which reinforced this structure that the attorney general doesn't have any general law enforcement authority unless it's specifically delegated to him by the legislature or referred to him by a prosecutor.

Now, we think, then, because this is an issue that bears on Idaho's sovereigty, that, again, we think the statutes are clear. But if the Court had any doubt, this is a textbook case for something that should be certified to the Idaho Supreme Court because it depends on the interpretation of state law and state law authority and what the attorney can actually -- the attorney general can actually do.

And I also suspect that if we went to the Idaho Supreme Court and if the Idaho Supreme Court said, yes, the attorney general is right, he doesn't have law enforcement jurisdiction over this, that would also redress any complaint that the plaintiffs have here. Because if the attorney general doesn't have the ability to enforce it, then his opinion is just a legal opinion in a vacuum that doesn't have any possibility of harming them.

And that's -- moving on to the second point of whether

there has been an actual threat here, that's why we are in this situation, is there hasn't been a threat. At a minimum, for a threat, you have to have something that's actually communicated by the threatener to the threatened party. And aside from the fact that the attorney general has not -- cannot threaten, he hasn't made that communication.

He wrote a letter to Representative Crane that was then put out on the Internet, and a bunch of other people saw it.

Now, they may know that, and on one respect they know his -- the fact that he previously expressed this opinion. But that doesn't mean that there is a threat to them.

And you look at the *Twitter* case from the Ninth Circuit; I think this really illustrates the point well because the facts that you had in *Twitter* where the Ninth Circuit said there was no standing are much more clear than this case.

In that case, Attorney General Paxton from Texas had served Twitter with a civil investigative demand requesting documents related to Twitter's policies. And Twitter brought a lawsuit saying, well, this is a -- this is threatening our free speech, and we are self-censoring because of this demand, and so we have standing to challenge your demand.

And the Ninth Circuit said: For one, a civil investigative demand is not an adversarial proceeding. It may

have been sent to Twitter, but it's just requesting documents. There is no subsequent threat of legal proceedings, and imagining what legal proceedings might follow would be purely speculative. So if plaintiffs have censored because of it, they may have subjectively censored. It was self-censorship. It was voluntarily, and it doesn't create standing.

Well, the same thing is true here. If the attorney general -- and much more so because the attorney general hasn't even communicated to the plaintiffs. He didn't send them anything.

And their fear is not about any threat of adversarial proceedings against them or any criminal proceedings against them but rather the possibility that the attorney general might restate an opinion that a prosecutor might credit and believe or might request the assistance of the attorney general to enforce and then bring charges against them, when no prosecutor has threatened such a thing, and the attorney general has no opinion on the question.

So if there was no standing in *Twitter*, it's much more clear that there is no standing in this case, and especially, again, because this was not an opinion that would have been made public. This was not in the format of an official attorney general opinion. It was not -- it was provided only to Representative Crane, and it was a privileged communication until it turned out --

THE COURT: You use the word "privileged." What do you mean by that? Privileged as in attorney-client privilege?

MR. WILSON: Yes, sir.

THE COURT: I'm not sure I understand what that means.

MR. WILSON: Well, so the attorney general has a duty under Idaho law to represent both the legislature, as a body, and also individual legislators when they ask the attorney general for legal advice.

And the opinion duty of the attorney general comes out of that general duty to provide those -- that legal advice. So that means that in an ordinary circumstance, when a legislator requests an opinion of the attorney general, the legislator receives a private response. And there might be --

THE COURT: So you're saying the attorney-client privilege?

MR. WILSON: Yes, Your Honor.

THE COURT: Well, then, hasn't the recipient, Senator Crane, waived that by apparently passing it on to someone who then used it as a fundraiser or at least were on the Internet and then was used as a fundraiser?

I'm not sure -- how does the fact that it was privileged -- how does that even enter into the discussion where it clearly entered the public domain?

MR. WILSON: We don't contest at all that Representative Crane waived the privilege.

THE COURT: Representative Crane.

MR. WILSON: Yes. He waived the privilege.

And -- but it was -- the point is, if you're saying that the attorney general has threatened, we can't have possibly threatened prosecution by providing a privileged communication to a client, like, any more so than, you know, if I -- if I represent a big corporation and I provide them with legal advice about a lawsuit that they might bring against another corporation, I haven't threatened litigation against that other corporation just by providing legal advice about it.

In the same way, if Attorney General Labrador sends a private letter to a legislator, he hasn't threatened anything against anyone by doing that. That's why the context of this communication matters.

He's not saying it's enforcement policy of Idaho law, because he wouldn't have the authority to do that anyway. He is just providing a private opinion to the legislator about what Idaho law means, and that opinion has now been completely withdrawn.

So turning now to the last --

THE COURT: Well, just to be clear, you -- not only on behalf of the attorney general but also the prosecuting attorneys that you represent, there is still no disavowal of the legal analysis or conclusions drawn in that letter; correct?

MR. WILSON: Your Honor, I'd say that that is -- it's

correct, but it's not the right framing of the issue. And that's because if there is no properly presented context for us to have an opinion on this issue, then we don't have an opinion on this issue. Nothing has called on us to do so.

But more importantly --

THE COURT: Well, that's part of the problem with the First Amendment issue. You're saying that the doctor should go ahead, do what they are going to do, and then wait for a criminal enforcement or a loss of their license, and then they can challenge the First Amendment issue.

Isn't that almost precisely why there is a fairly loose standard for injury in fact on First Amendment pre-enforcement claims? Just so that we don't subject someone who is trying to assert a First Amendment right or other constitutional right to the jeopardy of criminal prosecution and loss of medical licensing privileges as a condition of exercising those rights.

MR. WILSON: Well, Your Honor, I'd say that you -- we do have a more lax standard in the First Amendment context, but it's still not met here because, again, this is from someone who cannot threaten and who has not threatened. There is nothing about the Attorney General's private communication to a legislator that constitutes a threat to a doctor.

THE COURT: Well, it's not a threat, but it's a statement of an interpretation of a statute which, if adopted by

prosecuting authorities, would, in fact, result in criminal action and loss of licensure.

MR. WILSON: But I think that --

THE COURT: Do you agree with that?

MR. WILSON: The latter clause that the Court just gave there is key, "if adopted by prosecuting authorities." They are the ones who have the power here. They are the ones who matter. And none of them --

THE COURT: Well, they would have the same ability right now to disavow that interpretation of General Labrador and simply say: That's not what we're doing; that's not our interpretation of the statute, and we will not prosecute.

We have not heard that from anyone; correct?

MR. WILSON: I don't think they've -- the prosecutors have not taken any position about it either before, after, or during. I think they've got many other things that they are busy with.

But I'd also -- I'd note that on the disavowal point, when you look where disavowal is an issue -- like, for example, in the *Tingley* case -- it's not disavowal of your position where you say, "I'm sorry. I was wrong. I never should have said it. It was a mistake. Please forgive me." It's disavowal of enforcement, which can happen for any number of different reasons that -- and that's in the context of a law on the books.

So *Tingley* was a case about Washington's ban on

conversion therapy. And it was because Washington State had not disavowed enforcement of that policy the Ninth Circuit said, well, that gives -- that gives standing to challenge it because you haven't --

THE COURT: How is that different from disavowing an interpretation of a statute which has been publicly disseminated by the state's chief legal officer?

MR. WILSON: Well, I think that, you know, I would read -- frankly, Your Honor, when the attorney general said in this letter here -- he said the Crane letter is void; it is withdrawn; it does not state the opinion of the attorney general on any question of Idaho law -- if that's not a disavowal for Ninth Circuit purposes, I don't know what is. It's --

THE COURT: Well, yeah. I can tell you exactly what it would be, which is that there was an error in the analysis, and that is not the opinion of the attorney general; not that it should not have been issued but that the substantive decision itself was wrong, and we should not have issued it because it is wrong. That's a disavowal.

MR. WILSON: That would also be a disavowal. But there's two -- I think there's -- the Ninth Circuit language is not just disavowal; it's disavowal of enforcement.

And an opinion that does not state the attorney general's opinion on any question of Idaho law and is void and withdrawn, that is not an opinion that is being enforced. So we

have -- you have the equivalent of that disavowal in this situation.

Now, you can also disavow by saying, "I was wrong, and I'm sorry." But that's not -- that's not required. It doesn't -- it's not that every case moves forward and there's always a justiciable controversy until the defendant agrees with the plaintiff. Sometimes there is not a justiciable controversy because the two sides have a joint issue. There is not a dispute. They are not in conflict over the same territory.

And that's what's happened here. The attorney general has said: This does not reflect any opinion I have about Idaho law. So there is not a dispute here.

I see that my time is up. I'm happy to answer any other questions you have.

THE COURT: No. That's fine. Thank you very much.

MR. WILSON: Thank you, Your Honor.

THE COURT: Mr. Neiman.

MR. NEIMAN: Just very briefly, Your Honor. I think it's four points.

First, a suggestion that somehow this communication with the legislator was privileged is a little hard to understand because the statute requires the attorney general opinion letters to be made public and advice that's required to be made public is the opposite of privileged advice.

Second, a suggestion that somehow it's enough to

disavow the -- the -- I'm trying to think of how he said it. Mr. Wilson was suggesting that there has been a disavowal of enforcement here. There has been no disavowal of enforcement here.

He couldn't have been clearer in responding to Your Honor's questions that they are absolutely reserving to themselves the right to move forward on a prosecution cooperatively with the various district attorneys, local prosecuting attorneys that Mr. Wilson represents on exactly the theory that was put forth in the letter. Nothing has disavowed their ability to do that, which is exactly the problem.

Which gets me to my last point, Your Honor, which is, you know, I think, Mr. Wilson has valiantly tried to give an answer to your question about how would you advise a doctor if you were representing them. That was the best answer, I guess, that can be given for someone sitting in his shoes defending his position.

But the only rational advice that any lawyer could give a doctor right now, given that the Attorney General wrote, under his own signature, that a referral violates Idaho's law, is: You are at risk of prosecution if you make a referral. And for that reason, injunctive relief is appropriate here, Your Honor.

And just the last thing I want to say is that the core of our claim is a First Amendment claim, but we also have a very

important due process claim, and I don't want that to be lost here.

THE COURT: Now, We are not -- you know, I, in fact, was going to note -- and it's really what Mr. Wilson alluded to -- the reason why he doesn't go to number two, you know: And we don't argue that even if there is standing; what we did is completely constitutional. There was nothing in the briefing by the attorney general or the other defendants which really addresses that issue, the substantive issues of whether there was a constitutional violation.

Now, I want to be clear, by saying that, Mr. Wilson, I'm not suggesting you are waiving that in any way. I'm just noting that, for purposes of our decision here today, we are going to focus only on the issues that are briefed, which will include primarily standing, whether it's moot, issues of that sort. We are not going to weigh into those other issues simply because they are not briefed here today.

It does make it difficult because I do have to make a determination of likelihood of success on the merits, but I will just have to base that upon what's already been submitted.

All right. Anything else?

MR. NEIMAN: No, Your Honor. Thank you.

MR. WILSON: Your Honor, may I briefly respond?

THE COURT: Yes.

MR. WILSON: Just one point, that Mr. Neiman said that

the statute requires attorney general opinions to be made public. I understand this is probably not something that Mr. Neiman is super familiar with, because it's just the way the Attorney General's Office has operated. But the attorney general does not make every opinion public. There are many opinions that he renders that are just provided privately to legislators and remain privileged. That was true in the last administration just as much as it's true in this one.

THE COURT: Well, you know, that's an interesting problem. I don't -- you know, the State's equivalent of the Freedom of Information Act -- are you saying those could not be obtained by an interested citizen because they are privileged as a communication by the state's elected attorney general and a state-elected member of the House or Senate?

MR. WILSON: That's exactly right, Your Honor.

If Representative Crane hadn't waived privilege by voluntarily disclosing this opinion, it would have remained private until the end of time. And if anyone had requested it through a Freedom of Information Act request, we would have said that we have no responsive nonprivileged documents.

THE COURT: Okay. Well, I don't want to weigh into that; and fortunately, I don't have to.

It does seem to me, if I were a state court judge, I would find that to be a rather interesting issue to address just in terms of transparency of state government. But I would think

any action taken by a state attorney general, except in the context of actual litigation, would seem to be public. But, you know, what do I know?

I don't obviously get into that. It just strikes me as, I guess, a citizen of the state that I would be a little surprised if the attorney general, as an elected state official, cannot reveal the opinions they offer. But it's not an issue I have to address, and it's not an issue that would ever come before me. That's just purely an issue of state law.

MR. WILSON: And, Your Honor, I would say that it's really just because, in that context, the legislator is acting as a client of the attorney general. And so it's privileged legal advice.

The legislators have the right to request these opinions, and they are not made public and published unless the legislator gives consent and it's on a major issue of Idaho law. Then we will then publish the opinion under the appropriate circumstances.

But, otherwise, it's, you know, legislators in the course of a legislative session have all kinds of questions about, well, what does this law mean, what does that law mean. And the Attorney General is there to provide those advisory opinions and give legal advice to help them discharge their duties.

THE COURT: Okay. Well, as I said, it would be

interesting to get into it; but fortunately, I don't have to. I've got enough other stuff on my plate.

So thank you, Counsel. I will take the matter under advisement. We will not consider the matter to be at issue until we see the briefing, if any submitted, by the defendants with regard to the amicus briefs which were due, I think, Thursday I think I said at noon. Let's make it Thursday 5:00 p.m., and we'll consider the matter under advisement at that point.

And I will have Ms. Pugh or Mr. Pedersen communicate with the attorneys representing the other amicus about their obligation to obtain local counsel before the Court will formally consider their amicus brief, although I will have to admit I have already read it, so I'm not sure what that means. But it won't be considered specifically in any decision we issue until they have retained local counsel.

All right. Well, thank you, Counsel. And we'll take the matter under advisement. Thank you.

MR. WILSON: Thank you, Your Honor.

(Proceedings concluded at 3:13 p.m.)

REPORTER'S CERTIFICATE

I, TAMARA I. HOHENLEITNER, CSR, RPR, CRR, certify that the foregoing is a correct transcript of proceedings in the above-entitled matter.

/s/ Tamara I. Hohenleitner 06/08/2023

TAMARA I. HOHENLEITNER, CSR, RPR, CRR Date